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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Measures to ensure the protection of independent experts, members of the Sub-Commission, special rapporteurs, representatives and members of the Secretariat accompanying them on mission

Report of the Secretary-General

1. At its forty-seventh session, on 5 March 1991, the Commission on Human Rights adopted resolution 1991/33, entitled "Status of special rapporteurs and representatives, independent experts, members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and members of working groups established by the Commission on Human Rights". In the preambular part of the resolution the Commission recalled the advisory opinion of the International Court of Justice, adopted on 15 December 1989, on the applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 to special rapporteurs of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

2. In the light of the above-mentioned advisory opinion, the Commission, in paragraph 1 of the resolution, requested the Secretary-General to take the necessary measures in order to ensure that all special rapporteurs and representatives, independent experts, members of the Sub-Commission and members of working groups established by the Commission on Human Rights be considered as "experts on mission" within the context of article VI, section 22, of the above-mentioned Convention and urged States to comply with their obligations under it.

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3. In paragraph 2 of the resolution, the Commission also requested the Secretary-General to take the necessary measures in order to ensure the prescribed protection for officials of the United Nations Secretariat accompanying special rapporteurs and representatives, independent experts, members of the Sub-Commission and members of working groups established by the Commission on Human Rights, on field missions, and to report to the Commission at its forty-eighth session on the measures taken in this regard.

4. With regard to the implementation of paragraph 1 of the resolution, the following measures have been taken. In his letter of invitation to members of the Sub-Commission attending the forty-third session in 1991, the Under-Secretary-General for Human Rights included the following paragraph:

> "The Sub-Commission plays a major role in the United Nations human rights programme and I attach the utmost importance to its activities and deliberations, as well as to the independence and security of its members. They are appointed in their personal capacity and considered as experts on mission who enjoy the privileges and immunities set out in article VI, section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 and in article VI, section 19, of the Agreement on the Privileges and Immunities of the United Nations of 19 April 1946, concluded between the Swiss Federal Council and the Secretary-General of the United Nations".

5. Concerning the question of applicability of the relevant provisions of the 1946 Agreement, the Swiss authorities informed the Under-Secretary-General for Human Rights on 30 January 1991 that, although they were conscious of the fact that the absence of an official certificate might lead to difficulties, issuing such a document to members of the Sub-Commission would nevertheless create a precedent.

6. The Chairman of the forty-third session of the Sub-Commission on 19 June 1991 addressed a letter to the Under-Secretary-General for Human Rights requesting a document to be issued by the Swiss authorities to the members of the Sub-Commission at its 1991 session reflecting this special status. In this connection, the Chairman was informed of the position taken by the Swiss authorities, referred to above.

7. The letter which the Secretariat addresses to special rapporteurs, representatives (on the understanding that "representatives" in this context means representatives of the Commission or the Secretary-General, but not of States) and independent experts, informing them of their appointment, nomination or assignment, or inviting them to a meeting, will henceforth contain a sentence relating to their status, which could read as follows:

> "In the performance of these functions the Secretary-General will consider you as an expert within the meaning of article VI of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946. In that quality you are entitled to a United Nations certificate, which the Organization will provide in accordance with article VII, section 26 of the Convention."

8. In a further development, it may be reported that United Nations certificates have already been issued to members of the Committee on the Rights of the Child. Such certificates were provided in view of the fact that the issuance of United Nations certificates for members of human rights organs is in the process of becoming an established practice.

9. Regarding the implementation of paragraph 2 of resolution 1991/33, the attention of the Commission is drawn to the report submitted by the Secretary-General to the Fifth Committee at the forty-sixth session of the General Assembly on respect for the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations (document A/C.5/46/4).

10. In paragraph 4 of that report the Secretary-General stated, inter alia, that in order to carry out assignments

> "staff members of the organizations of the United Nations system have often had to operate under difficult and dangerous conditions. Therefore, as was stressed in [General Assembly] resolution 45/240, respect for the privileges and immunities of officials of the organizations of the United Nations system is becoming even more important in these times."

11. Furthermore paragraph 5 of that report reads:

> "Although privileges and immunities of officials are scrupulously respected by a great majority of Member States, there are areas where difficulties still continue to arise. In submitting the information about the cases in which the international status of officials of the organizations of the United Nations system has not been fully respected, the Secretary-General expresses the hope that consideration of the report will help to avoid the occurrence of such incidents in the future."